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Committee of nine on "Financial responsibility for automobile accidents."

Report of the Committee of nine on "Financial responsibility for automobile accidents", with a supplementary memorandum setting forth some aspects of the problem presented by proposed and pending legislation for the compulsory establishment of financial responsibility for automobile accidents. [192-]

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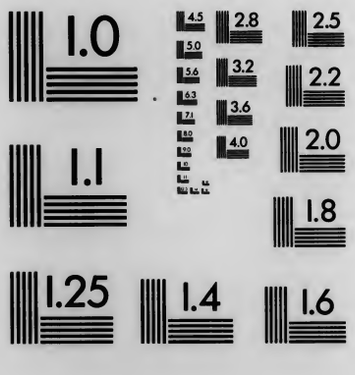

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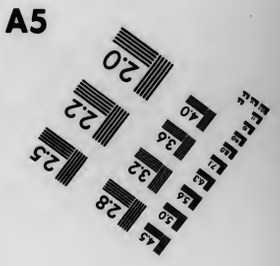

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Financial
Resonsibility For
Auto-mobile
Accidents~

Committee OF
Nine
Report

REPORT

OF THE

Committee of Nine

ON

"Financial Responsibility

FOR

Automobile Accidents"

—oo—

With a
Supplementary Memorandum
setting forth

Some Aspects of the Problem Presented by Proposed and Pending Legislation for the Compulsory Establishment of Financial Responsibility for Automobile Accidents.

Committee of Nine on "Financial Responsibility For Automobile Accidents"

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Report of the Committee of Nine on "Financial Responsibility for Automobile Accidents"

A

The prime and fundamental need in relation to the operation of motor vehicles is to prevent accidents and all regulatory legislation should be framed with that need in view. Prevention should not be subordinated to indemnity.

The evil is not that certain individuals may not be indemnified for injuries suffered through the faults of others but is that because of reckless and negligent operation of motor vehicles upon our highways and the disregard of laws many individuals are injured. If the evil is remedied—that is, if motor vehicle accidents are reduced in number—then the minor result of this evil will be reduced in at least the same proportion and it will be reduced in a way of utmost value; for the saving of life and limb will be substituted for the palliative of assured indemnity. There can be no adequate indemnity for loss of life or for serious injury.

Prevention of accidents, therefore, must be the real objective; and as to this we stand squarely on the platform of the National Conference on Street and Highway Safety (popularly called the "Hoover Conference", because presided over by Hon. Herbert Hoover, Secretary of Commerce), which put to one side compulsory insurance or security and emphasized the ways and means for prevention.

Prominent among the recommendations of the Conference are the following:

"Before granting an operator's license, the department or division should determine the applicant's ability to operate a motor vehicle safely by ascertaining his physical and mental fitness and his knowledge of the laws, and by requiring an actual demonstration of his ability to operate a motor vehicle."

*"Reckless driving and any other flagrant disregard of the rights of others by any user of the streets or highways should be vigorously and unceasingly prosecuted. There should be legislation providing adequate penalties for infractions of traffic rules, including mandatory suspension or revocation of licenses for a specified length of time for cumulative evidence of carelessness or irresponsibility, for operating a motor vehicle while under the influence of intoxicating liquor or drugs, or for other serious offenses against the motor-vehicle law, and severe penalties for driving during the period of suspension or revocation;***"*

"The law with respect to motor vehicles should provide that when any motor vehicle is operated with gross negligence or recklessness, in violation of the provisions of the general motor-vehicle law, resulting in serious injury to persons or property, where such violation has been established by due process of law, the registration of the car should be suspended or revoked and its number plates be removed or other means of prohibiting use of the vehicle instituted for a period depending on the seriousness of the offense."

"It is recommended that every community undertake prevention work aggressively, since it is the community that largely controls the factors that make for a reduced accident toll, this factor in turn being reflected ultimately in a lower cost for public liability, property damage and collision insurance."

To all of these we subscribe.

B

Compulsory assurance of pecuniary responsibility is at best but a partial and ineffective answer to the question how to protect the public against the loss caused by pecuniarily irresponsible owners of motor vehicles.

Compulsory motor vehicle insurance has been suggested because individuals in motor vehicle accidents are at times unable to collect damages because of the pecuniary irresponsibility of the motor vehicle operator at fault. Even as a means for assuring indemnity to those who may be injured or to the dependents of those who may be killed in motor vehicle accidents it would be ineffective in any of the following cases:

1. *Accidents caused by those who insure voluntarily.*

2. *Accidents caused by operators of adequate pecuniary responsibility.*

3. *Grade crossing accidents for which railroads are responsible.*

4. *Accidents in which the owners of cars only are injured.*

5. *Accidents to occupants of cars where there is no fault.*

6. *Accidents where fault cannot be proved or where the cars or persons at fault cannot be identified.*

7. *Accidents in which the individuals killed or injured are at fault.*

8. *Accidents which occur in private places, parking stations, garages, etc.*

9. *Accidents caused by motor vehicles when in use without the authority of the owner or when operated by thieves after the car has been stolen.*

Therefore, compulsory insurance or security will serve only to provide relief in the remaining cases where there is a liability for damages which cannot be enforced because the party liable is pecuniarily irresponsible. Statistics are not available to determine with any degree of accuracy the number of cases of this kind or the proportion to the total number of fatal and serious injuries resulting from motor vehicle accidents or the proportion to the number of licensed cars, but, even without exact figures, it is evident that they are relatively few. Should the state in order to safeguard the interests of the few disregard altogether the interests of the many?

Under a compulsory insurance law the great majority of motor vehicle owners would be obliged to buy at great aggregate expense the security which the law would require them to furnish either in the form of an insurance policy or a bond and regardless of whether the conditions and the territory in which they operated the cars made it really necessary for them to furnish the security. If the state should undertake to legislate without carefully weighing the interests of all its citizens, it might for the benefit of a few impose an unjustifiable burden upon the many.

C

Compulsion except by way of prevention of accidents should be avoided unless and until it shall be definitely ascertained that the loss through pecuniary irresponsibility, reduced by the most effective accident prevention measures, is grave enough to justify so burdensome a measure.

In every line of human activity there are those who cause loss or injury to others and who on account of pecuniary irresponsibility are unable to furnish indemnity. For the state to select all motor vehicle owners as a special class to be discriminated against because of the faults of a few is manifestly objectionable in principle and may be justified only by the demonstration of absolute necessity in the interests of the public as a whole. Apart from the inadequacy of such a remedy in the respects hereinbefore indicated, it would be ineffective in the case of motor vehicles traveling to and from different states. Moreover, any such law would directly discriminate against the citizens and business men of the state enacting it. Any measure of this kind would tend to increase the cost of insurance. *Compulsory* insurance of *universal* application would reduce the incentive to careful operation which results from present personal liability and which is now an important factor in holding insurance rates to a reasonable level. It would, therefore, result of necessity that motor vehicle owners who now insure without compulsion and all other motor vehicle owners would be burdened with an increased cost of insurance. Then again, a measure of this kind would bring about a large increase in public expenditures for the enforcement of the law by state departments, which in view of steadily increasing taxation should also be taken into account. Another result which would certainly follow would be an increase in the number of groundless, fraudulent and exaggerated claims for damages, thereby creating still further congestion in our courts.

D

If, however, compulsory security be decided upon by legislative authority, the widest possible choice of kind and method should be permitted.

The American system of government is

not paternalistic. It does not dictate to citizens who own or operate motor vehicles what they shall do for their own good. The idea of compulsory security is that of protection, not of owners or operators of motor vehicles, but of others who may be injured through their fault. Therefore, any form of security which will fully protect third parties will accomplish the object. Hence it would be unreasonable and obnoxious not to give each motor vehicle owner wide freedom of choice as to the kind of security to be furnished.

In a recent address Insurance Commissioner Monk of Massachusetts estimated that only about sixteen per cent. of motor vehicle owners are insured. Regardless of its accuracy, this estimate indicates that at least a very large proportion of motor vehicle owners—probably the great mass of farmers and small town people—do not insure. Nor would the deposit of securities with a state official be generally possible or popular. An insurance policy, a surety bond or a deposit of securities should, of course, be allowed; but in addition some other and easier method should be provided that owners of motor vehicles who are unquestionably pecuniarily responsible through ownership of farms or other real estate may comply with the requirements as to security. Unless provision of this kind shall be made, widespread dissatisfaction and unrest will result.

E

Compulsory security by itself will not reduce accidents but will tend to increase the number. Therefore, no such measure should be enacted unless prior thereto or concurrently therewith there be put into effect and enforced in every state laws affecting the operation of motor vehicles in accordance with the recommendations made by the Hoover Conference. In the absence of such

concurrent legislation and enforcement compulsory requirement of security will do more harm than good.

Respectfully submitted,

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JAMES W. HENRY
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EDWARD C. STONE
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COMMITTEE OF NINE ON "FINANCIAL RESPONSIBILITY FOR AUTOMOBILE ACCIDENTS."

Some Aspects of the Problem Presented by Proposed and Pending Legislation for the Compulsory Establishment of Financial Responsibility for Automobile Accidents

I.

Efforts should be concentrated upon accident prevention.

Compulsory security for the establishment of financial responsibility for automobile accidents would be merely a *palliative* for the evil it is designed to remedy; for no money indemnity can really compensate for loss of life or limb.

The specific evil sought to be palliated is that often persons entitled to damages for injuries in automobile accidents are unable to collect because of the financial irresponsibility of the owners or operators of the automobiles at fault. Manifestly this is a consequence of a far greater and more fundamental evil, which is that accidents occur in the operation of automobiles through the faults of the operators.

A reduction of this fundamental evil would proportionately remedy—and not merely palliate—the secondary evil for which compulsory security is proposed as a remedy. Common sense, therefore, dictates that it is against this root evil that remedial efforts should be concentrated.

Opportunities for accident prevention are immense. And the field of prevention has as yet been comparatively neglected, though in some few states and cities beginnings have been made.

To start with, it should be appreciated that we are not confronted with any general or growing disposition to recklessness. On the contrary, the ratio of injuries inflicted to the number of automobiles registered is steadily decreasing. That is convincingly indicated by the following

data, from the "Bulletin of Safety Education," February 1st, 1925, published for the Education Section of the National Safety Council, by the National Bureau of Casualty and Surety Underwriters, relative to automobile accident death rates:

Year	*Rates*	
1915	24.0	Per 10,000 cars
1916	20.8	
1917	18.2	
1918	15.5	
1919	13.0	
1920	12.0	
1921	11.9	
1922	11.6	
1923	10.3	

But by thorough measures for prevention the absolute number of automobile accident injuries can be largely reduced. That is shown by the following illustrations of what has already been done:

In Connecticut, according to "Bulletin No. 13," of the Department of Motor Vehicles, dated November 18, 1924, the State Police were put on the roads in full force on May 1, 1924. The following comparative figures of fatal accidents show the results:

	Total fatally injured	
	1923	*1924*
January to April—both inclusive...	37	88
May to October—both inclusive...	185	140

And from the full figures, here epitomized, the Commissioner of Motor Vehicles deduces the conclusion: "It is apparent that police discipline and supervision . . . is producing results in Connecticut."

In 1924 the Massachusetts Safety Council organized a special campaign in the cities of Cambridge and Somerville, which had shown the highest ratio of fatalities to children of any cities in the state. As a consequence there was a reduction of 5 in the number of children's deaths in that

area, during that year, as against an increase of 40 children's deaths in the state as a whole.

In a bulletin dated December 30, 1924, the National Automobile Chamber of Commerce claims that already, as a result of organized efforts for prevention in certain localities, "the increase in motor fatalities has been checked." According to reports received from various agencies in such localities, the number of fatal accidents in November, 1924, was reduced to 363, from 419 in November, 1923, in the face of a 16 per cent. increase in the registration of automobiles.

Finally, according to a compilation of local reports made by the Public Safety Division of the National Safety Council, published in "National Safety News," February, 1925, the group of 27 American cities having active community safety councils has shown a substantial reduction in automobile fatalities—not merely in the fatality rate but in the absolute number of the persons killed. From 1994, in the year 1923, such number was reduced to 1845, in the year 1924, being a reduction of 7.5 per cent., although between those years there was an increase in the number of registered motor vehicles estimated variously in the different localities at from 8 to 28 per cent. In the following of such cities, in which accident prevention efforts have been most intensive, the rates of decrease in automobile fatalities in 1924, in comparison with 1923, were respectively as follows—the figures in parentheses showing the corresponding rate of increase in the number of motor vehicles registered: Atlanta, 53%; Baltimore, 13% (22%); Battle Creek, 27% (12%); Boston, 11%; Buffalo, 26%; Chattanooga, 47%; Cincinnati—County—26%; Grand Rapids, 16%; Louisville, 29% (25%); Memphis—County—47% (28%); Oakland, 44%; San Antonio, 32%; Syracuse, 27% (8%); and Wilmington, 16% (21%). And, according to the same authority, automobile fatalities in 1923 and 1924 respectively

decreased in Chicago from 621 to 563 (9.3 per cent.) and in New York from 1073 to 1024 (4.6 per cent.), due to energetic efforts on the part of the police, motor clubs, etc.

But these are only the first fruits of a few scattered and incompletely organized efforts. Generally the underlying evils are yet far from being commensurately dealt with.

In an address at the First National Conference on Street and Highway Safety, Washington, D. C., December 15, 1924, Hon. Herbert Hoover, Secretary of Commerce, declared with emphasis:

> "But few States have driven toward sufficient personal accountability for recklessness."

And Hon. Thomas B. Donaldson, former Insurance Commissioner of Pennsylvania, has declared:

> "Legislators of Pennsylvania and other states have for years encouraged the advance of the automobile and encouraged high-speed by enthusiastic building of improved roads. Not once has there been evidenced real thought on the other phase—that *police protection* must accompany the improved roads."

The way to automobile accident prevention is clearly blazed in the Report of the First National Conference on Street and Highway Safety, recently published. The fact that such way is slow, laborious, requires the coordination of many forces and calls for the ascertainment of facts before final details can be determined, is no excuse for passing by this remedy for the fundamental evil in favor of a partial palliative.

This conclusion does not militate directly against compulsory security as a subsidiary measure, but it leads to the following Point.

II.

In any event, no form of security should be made compulsory for automobile owners until most stringent police measures to bar reckless and incompetent motorists from the roads have been put into full force and effect.

Any proposal providing only for the payment of damages, while permitting reckless and incompetent drivers to remain on the roads, would not only promote accidents but would also divert public attention from the fundamental evil and its remedy. And what would be gained if each victim of an automobile accident due to the fault of another should be assured a few dollars, if at the same time the number of victims should be doubled?

That compulsory insurance, as a qualification for registration or a license, would drive the reckless and incompetent from the roads, through their inability to obtain insurance, is a more than doubtful supposition which will be dealt with later.

But unless it should have the result just mentioned, universal compulsory insurance of itself would impose no penalty on the reckless driver, except the price of insurance, and that price once paid and the burden of possible loss shifted to the insurance carrier, the only incentive to care that appeals to the foolhardy and morally obtuse would be removed. And the money for the injured would come principally from the premiums of the law-abiding, careful and competent motorists — the large majority—rather than from the reckless few who habitually cause accidents, thereby indirectly subsidizing recklessness and moral irresponsibility. Consequently universal insurance through compulsion, unless supplemented by efficient police measures, would constitute a public menace.

III.

The problem is national in the sense that it cannot be solved by single state action.

Referring to accident prevention, the National Conference on Street and Highway Safety has pointed out that one of its most important phases "is the problem of securing uniformity of legislation, regulation, statistics and practices."

> "The flow of street and highway traffic recognizes no political boundaries and cannot be hampered by changing principles of control, even though local conditions may dictate the necessity of local changes of detail, without creating that confusion and uncertainty which is in itself a menace to the safety of motorist and pedestrian alike."

The same observation applies to the problem of securing financial responsibility on the part of automobile operators. There are great practical difficulties in the way of procuring compliance with requirements for insurance or security imposed under a state law, by automobiles coming into such state from other states. If such cars should be exempted from the application of the state law, manifestly the state would discriminate against its own citizens, besides which the law would fail to give protection to its citizens against injuries caused by such cars. On the other hand, if, by such requirements, automobiles from other states should be largely excluded, millions in trade would be lost to the state.

Moreover the powers of a state to burden or restrict "interstate commerce," even where Congress has not exercised its power of regulation, are limited; (*Robbins v. Shelby County*, 120 *U. S.* 489, 493; and see *Hendrick v. Maryland*, 235 *U. S.* 610, 622-623). Interstate commerce "consists in intercourse and traffic, including in these terms navigation and the transportation and transit of persons and property, as well as the purchase, sale and exchange

of goods and commodities"; (*County of Mobile v. Kimball*, 102 *U. S.* 691). And specifically, the extent to which the legislature of a state may restrict the rights of citizens of other states in the use of its highways is doubtful; (*Michigan Public Utilities Commission v. Duke*, U. S. Supreme Court, January 12, 1925; *Advance Opinions*, 1924-1925, 69 *L. ed.* 207).

This phase of the problem should not be passed without noting its bearing upon state fund automobile liability insurance which has at times been proposed as a solution. Those who advance such a proposal forget that the primary function of insurance is the protection of the assured, that the automobile is a moving vehicle, that the motorist knows no state lines and that it is when away from home that he needs protection most. Would a Massachusetts State Fund, for example, if one of its assured should be involved in an accident in, say, Florida, Illinois or California, promptly come to his assistance, investigate the circumstances, defend him against invalid or exaggerated claims and discharge his liability, if any? And would a certificate of insurance in a Massachusetts State Fund be acceptable in such other States as assurance that indemnity in proper cases would be collectible by their citizens? Not at all! State insurance will not function beyond state lines. Is it not self-evident that a satisfactory solution of this problem calls for insurance carriers that not only theoretically can but also practically will function with uniform efficiency throughout the land?

The problem, therefore, being so highly an interstate one, can be dealt with efficiently only by uniform state laws. Conflicting requirements would result largely in confusion and vexations. Consequently the proper course is a conference between representatives of the various states to decide and agree, so far as possible, upon some uniform legislation, instead of the legislature of each or any state acting

precipitately in an attempt to solve the problem by itself.

A wise procedure would be for the various states to refer this whole problem to the Commissioners on Uniform State Laws to the end that such body may prepare and present to the various state legislatures measures that will properly and adequately meet the situation.

IV.

It should be realized at the start that the large majority of the injured in automobile accidents would in no way or degree be benefited by compulsory security.

The purpose for which compulsory security is proposed is to assure indemnity to the victims of automobile accidents in those cases only where they are legally entitled to damages and are unable to collect because of the financial irresponsibility of the motorists liable.

In cases of the following classes, compulsory security would make no difference in favor of the injured, since they would be equally secured without compulsion:

1. Accidents caused by those who insure voluntarily.
2. Accidents caused by cars the owners or operators of which are of adequate financial responsibility.

In cases of automobile accidents of the following class, the fact that security is compulsory *for motorists* would, for obvious reasons, make no difference in favor of the injured:

3. Grade crossing accidents for which railroads are responsible, and collisions with horse drawn vehicles and obstructions on the roadways for which non-motorists are responsible.

In cases of the following classes, compulsory security would be of no benefit to the injured, for the reason that the security would be for the payment of damages for injuries to the public and not for injuries to the motorist who furnishes it:

4. Accidents in which the owners of the cars insured alone are injured.

In cases of the following classes, compulsory security would be of no benefit to the injured, because the injured would not be legally entitled to damages:

5. Accidents to occupants of cars where there is no fault.
6. Accidents where the persons injured are at fault, whether the driver of the car be also at fault or not.

A glance at any analysis of automobile accidents by causes will reveal that cases of the classes above enumerated, in which compulsory security would be of no benefit to anybody, account for a very high percentage of all injuries in automobile accidents. How high that percentage is will be indicated in Point VI.

V.

Besides being only a palliative, compulsory automobile security would be ineffective in practice to assure the intended relief in many cases where the injured are legally entitled to damages.

The evil sought to be remedied is that persons legally entitled to damages for injuries in automobile accidents are unable to collect because of the financial irresponsibility of the motorists liable.

But in the following classes of such cases, where the injured *are* legally entitled to damages, compulsory security, in practice, would be more or less uncertain or highly ineffective, for the assurance of collection of damages by the injured, viz:

1. Accidents where the fault cannot be proved or the cars or persons at fault cannot be identified.

2. Accidents where the cars or persons at fault are unregistered or unlicensed.

3. Accidents where the cars at fault have been stolen or otherwise operated without the authority of the owner.

4. Accidents where the cars at fault are from other states.

5. Accidents on private ways and in garages, private parking places, club grounds, recreation fields, race tracks and elsewhere, not on the public highways.

Relative to the classes of accidents just enumerated, it should be noted respectively:

1 and 2. These classes of accidents would continue to be very numerous unless compulsory security should be supplemented by traffic control and police approximately equivalent to what is required for thorough accident prevention. The requirement of security as a qualification for a license would be effective only to the extent that the requirement of a license itself is enforced; and the latter requirement is yet far from being universally enforced, even in the most highly policed centers, as recent experience in New York City has conspicuously revealed.

3. As to the third class of cases: It is worse than doubtful on general constitutional principles whether a legislature has power to require the owner of an automobile to insure or otherwise secure the public against its use by thieves or other unauthorized persons; (8 *Cyc.* 1099; and see *Lorando v. Gethro,* 228 *Mass.* 181).

4. As to the fourth class of cases: It may be true that a compulsory security law can be made to apply to automobiles

coming in from other states. And such cars may be subject to compulsion to carry insurance under the laws of their respective home states. But of the many measures for compulsory security yet proposed, nearly all would exempt automobiles coming in from other states (for reasons already indicated). And where the laws of their respective home states should compel security, such requirement could (and, for reasons of economy, frequently would) be satisfied by insurance covering liability in the home state only; for the legislature of a state has no authority to compel security beyond the borders of such state. (For the general principle of constitutional law here involved, see *Pennoyer v. Neff,* 95 *U. S.* 714, 720; *Baker v. Eccles & Co.,* 242 *U. S.* 394; *McDonald v. Mabee,* 234 *U. S.* 90; and *Flexner v. Farson,* 248 *U. S.* 289). In a measure now pending in Massachusetts it is provided that operators of automobiles from other states shall file with the Registrar of Motor Vehicles a certificate of insurance within forty-eight hours after entering the state. But how would that protect the public in Massachusetts for the forty-eight hours during which the automobiles from other states would be permitted to operate without security? And how would enforcement officers know when a foreign automobile had been in Massachusetts for forty-eight hours?

5. As to the fifth class of cases: The decisions sustaining the validity of automobile regulations have been based largely upon the power of the legislature to prohibit altogether the use of motor vehicles upon the public highways; (*People v. Rosenheimer,* 209 *N. Y.,* 115, 120; *State of Maine v. Mayo,* 106 *Me.* 62; *Commonwealth v Kingsbury,* 199 *Mass.* 542). But manifestly a requirement of security to cover accidents in private places would not be appropriate as a regulation of the use of the public highways and consequently would be of questionable validity as a qualification for a license to use such highways; (see *Pawloski v. Hess,* Massachusetts Supreme Court, September 20, 1924).

VI.

Compulsory automobile security would burden and penalize the immense multitude of motorists, because of the faults of a relatively few of them and for the benefit of only a small proportion of the injured.

According to the Report of the Committee on Statistics of the recent National Conference on Street and Highway Safety, popularly known as the Hoover Conference, there were in the United States, in 1923, approximately 15,000,000 registered automobiles, and about 600,000* fatal or more or less serious personal injuries due to automobile traffic. But according to the best estimates available,† roughly about 66-2/3 per cent. of those injured in automobile accidents are in some material degree the victims of their own folly, leaving only about 33-1/3 per cent. (or 200,000 in round numbers) legally entitled to damages. And the number of motorists causing such injuries is still less. From wide observation, Edward C. Stone, Associate Manager of the Employers Liability Assurance Corporation, Ltd., estimates that there is an average of about two injured persons per automobile accident. Consequently it appears that there were only some 100,000 motorists liable for these injuries to others or only a little over six-tenths of one per cent. of the total number of motorists. And it is for the faults of this insignificant percentage of wrongdoers (a large proportion of whom are probably incompetents and the habitually reckless who can be identified and barred from the roads by adequate police measures for accident prevention) that compulsory security would penalize the remaining 14,900,000 motorists.

Now as to the number who might be benefited: According to the Report of the Committee on Statistics of the recent Hoover Conference on Street and Highway

* See Appendix A. † See Appendix B.

Safety, about 33-1/3 per cent. of the injured are entitled to damages. Unfortunately accurate statistics are lacking upon which to base reliable estimates as to the proportion of those so entitled to damages who are unable to collect because of the financial irresponsibility of the motorists liable. Such proportion has been estimated as high as 50 per cent. and as low as 10 per cent.* Until more exact data can be obtained, the medium estimate of 30 per cent may be taken as the most probable. Taking 600,000 as the number injured and 200,000, or 33-1/3 per cent., as the number of the injured who are entitled to damages, the proportion of this number who would benefit by compulsory security, because of the financial irresponsibility of the motorists liable, would be 60,000—and the majority of these not seriously injured. Even this number would be subject to reduction by reason of the causes explained under Point V.

Consequently what is proposed by compulsory security is that, because of the faults of some 100,000 motorists, 14,900,000 other motorists should be penalized, for the benefit of some 60,000 of the public.

Would this penalty upon such 14,900,000 motorists be really material? How would compulsory security in fact burden them?

Incidentally it would cause much more trouble, confusion and delays than now exist during the license rush period. The remainder of the answer to this question depends upon what optional forms of security be permitted besides insurance.

Among the measures proposed, the methods of providing security are: (1) Personal surety bond; (2) a surety company's bond; (3) insurance; (4) a deposit of cash or securities with a public official; (5) real estate mortgages, etc.; but, for reasons that will be elaborated later, some of these options would be so generally unacceptable as to leave to the great mass

* See Appendix C.

of motorists as practically available only the taking of an insurance policy.

Figures are available from which the initial cost of compulsory insurance to the automobile owners of the country may be calculated approximately. The average annual rate for automobile liability insurance (insurance against loss from injury to or death of persons) today is $30.00 per car; lower for certain types of car, higher for others; lower in certain localities, higher in others,—but on the whole, $30.00 per automobile throughout the United States. There are 15,000,000 automobiles in the United States; thus, at present rates, the annual cost of liability insurance, to be borne by the automobile owners, under compulsory insurance, would be $450,000,000. That is at the present rates. But, as will be shown in the next Point, the effect of compulsory insurance would be to increase rates rather than to reduce them, indeed most probably to increase them largely.

According to Insurance Commissioner Monk, of Massachusetts, only 16 per cent. of automobiles are insured. This estimate is low. In the cities and congested centers unquestionably the proportion runs from 25 up to possibly 50 per cent. Putting, then, the proportion now insured throughout the country at 20 per cent, compulsory security would impose the burden of insurance on some 12,000,000 more automobiles than at present, at an additional cost of some $360,000,000. Certainly that would be "some burden"! No more expensive way of meeting the evil could well be imagined.

And who constitute the great mass of these now uninsured motorists, upon whom this immediate burden would fall? The answer, judging from data at present available, is:—

1. The farmers, who are usually careful drivers, operate principally outside of congested centers, and in large proportion own their farms and consequently are financially responsible.

2. Wage workers who drive to and from their work in modest cars and who, though perhaps not often financially responsible, yet are of a class who do little damage.

3. Business men and tradesmen in the smaller communities who generally are financially responsible at least to the extent of reasonable damages.

4. Public utilities in general and the wealthiest private corporations, which prefer to carry their own risks and are eminently responsible financially.

To each of these classes of automobile owners, the burden in question would, in most cases, be a needless imposition. And they would all have good reason for resenting it, if it should be imposed upon them without a thoroughgoing prior effort to meet the evil by driving the reckless and incompetent off the roads.

VII.

Compulsory automobile insurance would inevitably increase the cost of insurance.

Under present insurance policy forms, certain obligations are imposed upon the policyholders, certain conditions are attached to the policy and the coverage itself is limited by certain exceptions. Thereby the insurers retain a large measure of control over the assured, sanctioned by the fact that if the assured's obligations are not complied with or if the conditions or exceptions be violated, the assured will not be protected. These provisions are permissible because under present conditions the policy is a contract between only the insurer and the insured. But the purpose of compulsory security is that the insurance policy, for the protection of the assured motorist, shall protect also the injured member of the public; and, the provisions referred to, being inconsistent with the latter purpose, would have to be prohibited. Their absence would not only tend to increase the actual number of accidents

but would also and most certainly increase the number to be paid for by the insurers, and would thus inevitably increase the cost of the insurance.

In this connection it should be realized that compulsory insurance involves an inversion of the natural intent and purpose of automobile liability insurance. When the owner of an automobile voluntarily buys insurance he does so to protect himself, and the policy is framed to suit his interests. But when, under a compulsory law, he puts up insurance as security for the public, the purpose and intent of the contract are reversed, the interests of the purchaser become secondary and the policy must be drawn primarily to protect the public against him. Such change of purpose necessitates the elimination of certain features of the existing form of policy which, for reasons above indicated, tend to accident prevention and the reduction of the insurance cost.

Further it is certain that compulsory insurance would result in a far higher ratio of claims and lawsuits to accidents than is the case under present conditions.

It is a well known fact that the "ambulance chasers" are most active in bringing claims against those who are insured. False and fraudulent claims would spring up like mushrooms, and malingering after trifling injuries would take on the nature of a science. Rightful claimants, who otherwise would be satisfied with reasonable damages, would then, knowing liability to be assured up to certain limits, expect the limit and settle for no less without suit. For obvious reasons, suits by wives against husbands and husbands against wives, by children against parents, parents against children, guests against their hosts, etc., would then be the rule rather than as now the exception. And juries, unquestionably, would give larger verdicts and decide doubtful questions of fact more generally in favor of claimants when they should know that the amount

of their verdict would have to be met by a "wealthy" insurance company (which has collected premiums in advance for that very purpose), instead of by the defendant personally. Every lawyer knows that it is harder to get any verdict against a farmer or other person of modest means, from a jury of his neighbors, than it is to secure an exaggerated verdict against a distant corporation.

Against the conclusion from the preceding considerations that rates would materially increase, it is contended that, on the contrary, compulsory insurance would lower the cost of insurance, first by reducing accidents, and, second, by cutting down the expense.

As to the first of these contentions: There are those who argue that liability insurance ought not to be allowed because it makes the assured careless—even though naturally careful. This is a mistaken idea. But it is just as erroneous to believe that universal insurance would make the assured more careful. That is equivalent to the proposition that the possession of a policy, indemnifying the owner against financial liability for accidents, would make the reckless or incompetent driver less reckless or more competent—which is absurd.

But, it is argued, with insurance made a qualification for a license or registration, the reckless and incompetent would be driven off the roads through inability to obtain insurance. It is true that, under present conditions, it is becoming more and more difficult for the incompetent and habitually reckless to procure insurance. But this argument supposes that the insurance companies could continue their existing practices under a regime of compulsory insurance, although that would constitute them the final arbiters, in discretion, as to who should be allowed to operate cars on the public highways. Certainly the public would not tolerate such a condition; and neither could it be hoped that the companies universally would with-

stand the tremendous pressure for indiscriminate underwriting that would result. The elmination of reckless and incompetent drivers from the public highways is a task that calls for the full exercise of the police power of the State. For the State to pass the problem over to private insurance companies for solution, at the same time compelling such companies to change their contracts in ways making them less conducive to carefulness and responsibility, is a program holding out the opposite of a promise of accident reduction.

This argument further ignores the following facts: Insurance is issued to automobile owners as such and not to drivers as such. Through the power to refuse or cancel insurance of owners, the insurance companies could exercise no effective control over the multitude of hired drivers, among whom some of the most reckless operators are to be found. Nor could insurance reach the many, particularly in rural districts, who drive without licenses, nor the criminals, whether operating owned, borrowed or stolen cars, since they will drive, with or without insurance or a license. These are conditions that can be met only by a direct application of the police power by the State.

The second contention, that compulsory insurance would reduce the cost of insurance, by cutting down expense, is equally untenable. Under present conditions automobile liability rates are reduced to a minimum by competition between insurance carriers specializing in service, on the one hand, and such carriers specializing in cheapness, on the other hand.

VIII.

Compulsory automobile security in any form would involve a large increase in public expenditures, consequently in taxes, and, incidentally, in jury duty.

That a compulsory security law would entail a large increase in the public forces

now engaged in the registration of automobiles goes without saying. And an examination of the pending measures for compulsory security or insurance shows that under many of them other state departments would be similarly involved. The increase in public expenses and consequently in taxes from these causes would be considerable.

Moreover compulsory security would, as has been previously explained, result in a very large increase in litigation. In Boston, according to an estimate attributed to the Massachusetts Insurance Commissioner, about half the jury cases tried in the courts are for damages for injuries in automobile accidents. In Cincinnati the courts are so flooded with such cases, that one of the Judges of the Superior Court has made the suggestion that the courts should be relieved of this burden by providing for compensation, out of a state fund, to all persons injured in automobile accidents, regardless of fault. Clearly then, the courts are already "full up" with automobile litigation, and, if the amount of such litigation should be doubled or trebled—the probable result of any form of compulsory automobile insurance—the number of judges and court officers, besides court room space for trial terms, would have to be largely increased, all at a corresponding increase in public taxes—or the courts would be hopelessly congested. Recoveries under meritorious claims would be delayed. And jury service, a serious burden to many, would likewise be largely increased.

While not of primary importance, these additions to the already heavy load of taxes on the public, together with the truly tremendous pecuniary burden that would be imposed upon the automobile owners, should be taken into account when weighing the advantages and disadvantages of any proposal of the kind under discussion.

IX.

If any form of compulsory security be resorted to, an option among all practicable methods of providing the security should be allowed.

What is really wanted is simply that no automobile shall be licensed until its owner shall first have established his financial responsibility with respect to payment for injuries that may be inflicted upon the public. In practice that may call for the filing by each automobile owner, with a public official, of some form of guarantee of his continuing financial responsibility. But it does not call for compulsory *insurance.*

As has already been pointed out, there are grave public dangers involved in making automobile liability insurance universal by compulsion; and there are large numbers of eminently responsible automobile owners who plainly do not want to insure and upon whom an obligation to insure would be an imposition entirely useless for the purpose intended. Clearly such an imposition would be arbitrary, paternalistic and bureaucratic. All that a government based upon principles of liberty can rightly exact is that each owner shall put up security or a guarantee of responsibility in whichever best suits him of all practicable forms that will effect the purpose above specified.

Few of the measures now pending or proposed satisfy this condition. The majority of such measures prescribe that, as optional alternatives to insurance, the automobile owner must either (a) file a surety company bond, or (b) deposit cash or securities with a public official. But neither of these two promises to be a satisfactory alternative to insurance in many cases. Corporate surety bonds without a deposit of cash or similar collateral are not available to a majority of automobile owners. And the expenses, difficulties and delays incident to the recovery of funds that

once get into the hands of public officials will deter all but the most optimistic from having recourse to the other alternative. Consequently a law which would permit only these two alternatives to insurance, would practically be neither more nor less than compulsory insurance for the vast majority.

X.

Any form of compulsory security would be objectionable in principle.

Manifestly, to require every owner of an automobile (now an ordinary means of locomotion and transport) to put up security for the protection of the public against any possible fault on his part in the future, would be a wide departure from long established principles and practices. It raises the question, what principle differentiates the automobile owner from the owner of a gun, a bull, a police dog, a team of horses or any other kind of property that may be the means of doing injury to the public. At the moment the automobile menace happens to be demanding of the public more attention than any other. But that attention sooner or later will be diverted to other subjects and new demands will arise. It may be demanded that we all insure relief to the sufferers from all murders, robberies, etc., that we may possibly commit, from all fires that may possibly be communicated from our property to the property of others, etc., etc. Surely the victims of such wrongs need and deserve relief just as much as the victims of automobile accidents. Where is the line to be drawn? Really there is no sound distinction between any of these cases.

And where would this first step in departure from established principles lead to? Plainly toward paternalism—to a regime whereunder all wrongs would be compensated through insurance at the expense of the public, the individual responsi-

bility of the wrongdoers ignored and the prevention and punishment of wrongdoing forgotten.

Consequently there is no justification in principle for this proposed discrimination against motorists as a class. It can be excused only by a demonstration of its reasonable necessity for the public welfare. Until thoroughgoing efforts to bar the reckless and incompetent motorists from the roads and to enforce adequate penalties for serious traffic offences shall have been tried and failed, the necessity for this proposed departure from principle will remain, as it now is, entirely undemonstrated.

Conclusion

There is no question about the need for protecting the public against the automobile menace. The sole question is about the means.

Upon first impression, compulsory insurance may seem to be a simple and expedient solution of the problem presented by the financially irresponsible motorist. Upon anlysis, however, it proves to be the opposite of simple and expedient.

Then compulsory security, with insurance as one optional method of furnishing the security, presents itself as an alternative. But this proposed solution, also, proves, upon analysis, to be encumbered with difficulties and complicated by factors that involve the constitutional rights of our citizens, the imposition upon them of an obnoxious burden, the probability of great economic waste and perhaps an enhancement of the difficulties in the way of a solution of the major problem—the prevention of automobile accidents.

Clearly, then, measures of the kind under discussion are subjects for caution. Their disadvantages and dangers need to be realized and weighed against their possible benefits. Their effects in the way of solving or aggravating the interstate problem need to be carefully considered. And, above all, regard must be given to their probable influence for or against accident prevention. The people are tiring fast of expensive panaceas. The legislators may well go slow to make sure that these measures do not fall in that obnoxious category.

Appendix A

In the Report of the recent National Conference on Street and Highway Safety, popularly known as the Hoover Conference, the loss in the United States, in 1923, from street and highway accidents is estimated to have amounted to "22,600 deaths and 678,000 serious personal injuries," about 85 per cent. of which—i. e. about 600,000—were incident to automobile traffic. This figure is adopted in the preceding paper, although the estimate seems high. In 1923 the deaths due to automobile accidents in the United States, according to statistics of the Bureau of the Census, numbered about 16,452. And Mr. H. P. Stellwagen, of the National Bureau of Casualty and Surety Underwriters, in an address recently delivered before the Insurance Society of Baltimore, gave 410,000 as a conservative estimate of the number of non-fatal injuries from automobile accidents for the same year.

Appendix B

What proportion of the injured in motor car accidents are legally entitled to damages?

The percentage (33-1/3 per cent.) given in the preceding paper as the answer to this question represents what seems to be the average or medium estimate.

The Report of the Committee on Insurance of the National Conference on Street and Highway Safety contains an analysis of fatal injuries, which indicates that in only 33 per cent. of automobile accident injuries were the injured without fault.

Mr. A. E. Forrest, Vice-President of the North American Accident Company, from a study of a file of death claims growing out of automobile accidents, under personal accident policies, concluded that in fully 70 per cent. of the cases the injured persons had been more or less the victims of their own folly.

Mr. Austin J. Lilly, General Counsel of the Maryland Casualty Company, from broader data, has estimated that for about 28 per cent. of automobile accident injuries the injured are unquestionably entitled to damages, with some 12 per cent. more of the total cases doubtful, making in all about 40 per cent. of the injured who may have legally valid claims to damages.

Some data have been received showing a higher proportion than any above estimated. But the experiences to which such data relate are too narrow and the conditions too exceptional to indicate a true average.

Appendix C

What proportion of those legally entitled to damages for injuries in automobile accidents are unable to collect because of the financial irresponsibility of the motorists at fault?

The percentage (30 per cent.) given in the preceding paper as the answer to this question is highly tentative, being a sort of average of estimates based upon undisclosed or insufficient data. But even should this estimate eventually be proved to be far out of the way, that difference would not materially affect the conclusion.

Mr. W. W. Merkle, formerly State Senator of Pennsylvania and now a Director of the Automobile Club of Pittsburgh, in a recent radio address, estimated that not more than 10 per cent. of the persons killed or injured in automobile accidents fail of redress because of the financial irresponsibility of the motorists at fault—which 10 per cent. of the total injured amounts to 30 per cent. of the number estimated in the preceding paper to be legally entitled to redress.

Mr. Austin J. Lilly, General Counsel, in a special bulletin of the Maryland Casualty Company, dated January, 1925, estimates the proportion in question at 25 per cent., basing his conclusion in part upon the following propositions: In the cities, where the most accidents occur, from 25 to 47 per cent. of automobiles are insured. In the outlying districts, where the percentage of insurance runs lower, the great majority of automobile owners are farmers and business men of the community, who are financially responsible, at least to the extent of the average judgment. And a large proportion of uninsured automobiles are owned and operated by wealthy corporations, of a high degree of financial responsibility.

On the other hand, estimates received, based upon investigations and inquiries, indicate that in certain localities, not apparently abnormal, about 50 per cent. of judgments for damages for automobile injuries are uncollectible. But it is likewise indicated that only a small proportion of automobile damage claims go to judgment, the large majority of claims against insured or financially responsible motorists being settled either without suit or at least before judgment.

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